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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 8

DONALD JOSEPH AND PAUL PIERCE,
Petitioners,

vs.

STATE OF INDIANA,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF INDIANA

BRIEF FOR PETITIONERS

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Opinion Below

The opinion of the Supreme Court of Indiana in this case is set out in the record at pages 198 to 210 thereof and is officially reported in —— Ind. ——, 141 N. E. 2d 109. Petition for rehearing was denied on the 30th day of April, 1957, without opinion (R. 213).

Jurisdiction

Judgment of the Circuit Court of Hancock County, Indiana, was entered on the 16th day of February, 1954 (R. 6-8); affirmed by the Supreme Court of Indiana on the 18th day of March, 1957 (R. 198-210) and petition for rehearing was denied on the 30th day of April, 1957 (R. 213). Petition for certiorari to review the judgment of the Supreme Court of the State of Indiana affirming the conviction was filed on the 10th day of May, 1957, based upon 28 United States Code, Section 1257, and was granted by this Court on the 14th day of October, 1957 (R. 213).

Statement of the Case

During the course of the trial of this case in the Hancock County Circuit Court petitioners objected to the presentation of testimony in evidence of certain alleged conversations allegedly had between these petitioners and their custodial police officers (R. 46, 49 and 154-155) for the reason that at the time in question petitioners were wounded, had lost considerable blood and were in pain and had not been taken before a magistrate and informed of their constitutional rights nor had they been permitted to consult with an attorney to advise them of their rights nor had there been any showing made that these conversations were voluntary. The Court, after hearing evidence outside the presence of the jury (R. 46-50) as to Paul Pierce and in the presence of the jury as to Donald Joseph (R. 154), overruled the objection of Paul Pierce (R. 50) and overruled the objection of Donald Joseph (R. 155). Thereupon these conversations were admitted in evidence to the trial jury (R. 51-54 and R. 155-156).

Petitioners further objected to the admission into evidence on the trial of this case certain alleged confessions

obtained from them by state officers through the use of force, duress, intimidation and the threats to withhold and the actual withholding of medical treatment of petitioners unless and until they signed said confessions as written by said police officers (R. 54-55 and R. 157-158) in violation of Section 10-404, Burns' Repl., *Suter* v. *State,* 1949, 227 Ind. 648, 88 N. E. 2d 386, p. 391. The trial court overruled these objections (R. 97 and R. 170) and permitted these confessions to be read in evidence to the trial jury and denied petitioners' motion for a new trial in which these errors were specifically preserved (R. 8-13). Upon appeal to the Supreme Court of Indiana, these substantial constitutional questions were raised (R. 1) and decided adversely to petitioners by said court through affirmance of the convictions (R. 198-210) and denial of the petition for rehearing (R. 213).

Errors Relied Upon

A

The Court Erred in Affirming the Conviction of Petitioners Based Upon Oral Statements Elicited From Petitioners by State Officers Through the Use of Force, Duress, Intimidation and the Threat of and the Actual Withholding of Needed Medical Treatment of Petitioners in Violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and of Section 10-404, Burns' 1942, Repl.

B

The Court Erred in Affirming the Conviction of Petitioners Based Upon Written Confessions Obtained by State Officers Through the Use of Force,

Duress, Intimidation and the Threat of and the Actual Withholding of Needed Medical Treatment of Petitioners in Violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States and of Section 10-404, Burns' 1942, Repl.

Summary of Argument

Since substantially the same question is raised by both of petitioners' assigned errors herein they are grouped and supported by one argument in the interests of brevity.

I

Where Substantial Federal Questions Have Been Raised and Passed Upon in a State Court, This Court Will Make an Independent Examination of the Evidence.

Watts v. *Indiana,* 338 U. S. 49, 69 S. Ct. 1347;
Haley v. *Ohio,* 332 U. S. 596, 68 S. Ct. 302;
Patton v. *Mississippi,* 332 U. S. 463;
Malinski v. *New York,* 324 U. S. 401, 65 S. Ct. 781.

II

The Lower Court Erred in Affirming the Conviction of These Petitioners Based Upon Written Confessions Obtained and Oral Statements Elicited From Petitioners by State Officers Through the Use of Force, Duress, Fear, Coercion, Lack of Sleep, Intimidation and the Denial of Necessary Medical Attention.

(a) The circumstances surrounding the obtaining of the alleged confessions and the oral statements herein clearly establish their involuntary nature.

(b) Use of such confession and statements and affirmance of the conviction based thereon violates the Fourteenth Amendment.

Watts v. *State of Indiana,* 338 U. S. 49, 69 S. Ct. 1347;
Haley v. *Ohio,* 332 U. S. 596, 68 S. Ct. 302;
Malinski v. *New York,* 324 U. S. 401, 65 S. Ct. 781;
Ashcraft v. *Tennessee,* 322 U. S. 143, 64 S. Ct. 921;
Chambers v. *Florida,* 309 U. S. 227;
Brown v. *Mississippi,* 297 U. S. 278, 56 S. Ct. 461.

ARGUMENT

I

This Court Will Independently Examine Evidence in Support of Claim of Violation of Rights Protected by United States Constitution Where Such Claim Is Properly Raised and Denied by the State Court.

Throughout the proceedings in the courts of Indiana, petitioners claimed that rights protected by the United States Constitution had been denied them through the use of oral statements elicited and written confessions obtained through the use of force, duress, intimidation and the denial of necessary medical attention by state custodial officers (R. 46, 49, 50, 54, 55, 107, 108, 135, 154, 155 and 157). At each stage these rights were asserted by these petitioners and denied by the Indiana State Courts. This Court will examine and appraise the evidence as it relates to petitioners' Constitutional rights, *Smith* v. *Texas,* 311 U. S. 128, at 130, so as to determine the validity of the claim, *Lisenba* v. *California,* 314 U. S. 219, at 237, and whether such rights were denied either in express terms

or in "substance and effect." *Norris* v. *Alabama*, 294 U. S. 587, at 589; *Haley* v. *Ohio, supra.*

In the case of *Chambers* v. *Florida, supra,* where a conviction based upon confessions induced by fear and duress was reversed, this Court reemphasized the challenging role of our judiciary in such cases, stating:

> "Under our constitutional system courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are nonconforming victims of prejudice and public excitement. * * * No higher duty, no more solemn responsibility rests upon this Court than that of translating into living law and maintaining these constitutional shields deliberately planned and inscribed for the benefit of every human being subject to our constitution of whatever race, creed, or persuasion" (at p. 241).

In the instant case, the uncontradicted testimony shows that petitioners were wounded by gunshot in the altercation between two "plainclothes" Detective Officers of the Indianapolis Police Department and petitioners in an apartment rented to petitioners; that petitioners fled from the scene of the shooting and were apprehended shortly thereafter by members of the Indiana State Police; that petitioners were taken to State Police Headquarters in Indianapolis and subsequently turned over to members of the Indianapolis City Police Department; that petitioners' wounds were not treated while they were in custody of Officers of the Indianapolis City Police Department and before said conversations and statements were made; that a bullet went in the front of Pierce's body and emerged from his back; that bullet grazed the stomach of Joseph's body and another entered his body under his left arm

and emerged from his back; that petitioners had lost considerable blood; that Pierce had suffered unconsciousness after his injury and before the questioning and signing of the statements; that Pierce was suffering chills; that after they were taken into custody by State Police Officers they were never thereafter out of custody of Police Officers until after these conversations were had and these statements were made and signed; that during said time they had not consulted with an attorney, relatives or friends; that they had been placed in a cell with no furnishings during the night; that they had not been taken before any judicial officer for arraignment and hearing and advised of their constitutional rights (R. 47, 70, 88, 154, 160, 161 and 183) as required by the laws of Indiana (Burns' Indiana Statutes, 1942 Repl., Sec. 9-704); that immediately after these statements were signed by petitioners they were taken to the hospital where their wounds were probed, pus was removed and they were given tetanus shots (R. 97, 169 and 184).

The facts and circumstances which are uncontradicted establish that the oral statements and the written confessions were not the result of the free choice of petitioners but rather flowed from the long gruelling questioning, physical exhaustion and desire to obtain medical treatment of their wounds brought about by State Officers while held incommunicado and without due process and equal protection.

Conclusion

The record clearly shows petitioners' conviction was based upon statements and confessions extorted from them through the use of force, duress and intimidation. The refusal of the Supreme Court of Indiana to reverse the conviction upon the basis of their federal claim properly presented to it constitutes a violation of rights guaranteed petitioners by the Fourteenth Amendment to the United States Constitution.

WHEREFORE, it is respectfully submitted that the judgment of the Supreme Court of the State of Indiana and of the Hancock Circuit Court should be reversed.

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